

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (New Administrative Regulation)

4 103 KAR 1:120. Employee Access to Federal Tax Information (FTI).

5 RELATES TO: KRS 18A.095, 131.032, 131.081, 131.130, 131.190, 131.990

6 STATUTORY AUTHORITY: KRS 42.014, 131.032, 131.081, 131.130, 131.190

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.014 requires the Office of  
8 the Secretary to establish internal organization, functions and duties as necessary to fulfill  
9 the duties of the cabinet. KRS 131.032 requires each employee of the Department of  
10 Revenue, including contract staff, with access to or use of federal tax information (FTI) to  
11 submit to a criminal background investigation by means of a fingerprint check by the  
12 Department of Kentucky State Police and the Federal Bureau of Investigation. This  
13 administrative regulation establishes the guidelines to implement the requirements set  
14 forth in KRS 131.032 and Internal Revenue Service (IRS) Publication 1075.

15 Section 1. Definitions.

16 (1) "Applicant" means an individual who applies for employment with the Finance and  
17 Administration Cabinet, Department of Revenue, or a contractor working on behalf of  
18 those agencies who have, or will likely have access to federal tax information in their  
19 regular course of business.

20 (2) "Contract Staff" means an individual employed with the Finance and Administration  
21 Cabinet, Department of Revenue, or a contractor working on behalf of those agencies

1 that does not meet the definition of a classified employee with KRS Chapter 18A status.

2 (3) "Criminal background investigation" means a local, state or national fingerprint-  
3 supported criminal history background investigation performed in accordance with KRS  
4 131.032.

5 (4) "Classified employee" is defined by KRS 18A.005(7).

6 (5) "Department" is defined by KRS 131.010(2).

7 (6) "Disqualifying offense" means a conviction, plea of guilty, Alford plea, or plea of  
8 nolo contendere to any felony, misdemeanor, or offense the nature of which indicates that  
9 the employee constitutes an unreasonable and immediate risk to the security of FTI or  
10 confidential taxpayer information, as determined by the department.

11 (7) "Federally funded time-limited employee" is defined by KRS 18A.005(15).

12 (8) "Federal tax information" or "FTI" means a return or return information received  
13 directly from the IRS or obtained through an authorized secondary source, such as the  
14 Social Security Administration (SSA) or any entity acting on behalf of the IRS pursuant to  
15 an Internal Revenue Code (IRC) Section 6103 (p)(2)(B) Agreement.

16 (9) "Responsible agency" means an office within the Cabinet, Department, or an entity  
17 under contract with the cabinet or department, that employs or offers employment to an  
18 individual in a position for which the job duties include access to FTI.

19 (10) "Unclassified employee" means an employee that meets the criteria established  
20 in KRS 18A.115.

## 21 Section 2. Requirement for Criminal Background Investigations.

22 (1) The cabinet, department, or responsible agency shall require prospective or current  
23 employees, including contract staff, whose job duties include access to FTI, to submit to

1 a fingerprint-based local, state or national criminal background investigation as a  
2 condition of initial or continued employment:

3 (a) After the individual is offered a job but before they begin working; and

4 (b) At least one (1) time every ten (10) years thereafter.

5 (2) The cabinet, department, or responsible agency that requests a fingerprint-based  
6 local, state or national criminal background investigation on behalf of a prospective or  
7 current employee shall incur all fees associated with the cost of each background  
8 investigation requested.

9 (3) The cabinet, department, or responsible agency shall not employ any person in a  
10 position for which job duties include access to FTI or confidential taxpayer information if  
11 the individual refuses to consent to a fingerprint-based state or national criminal  
12 background investigation.

13 (4) The cabinet, department, or responsible agency shall notify each prospective or  
14 current employee determined to have a disqualifying offense.

15 Section 3. Disqualification. The cabinet, department, or responsible agency shall not  
16 employ or offer employment to an individual with a disqualifying offense listed in Section  
17 1 of this administrative regulation or whose background investigation reveals any factor  
18 that bears upon the fitness of the individual to work in a position with access to FTI or  
19 confidential taxpayer information. The department shall have the sole discretion to  
20 determine if a prospective or current employee of the department is suitable to work in a  
21 position with access to FTI or confidential taxpayer information to ensure its protection  
22 and security in accordance with KRS 131.190, IRS Publication 1075, and Finance and  
23 Administration Cabinet Standard Procedure 6.1.2 entitled "Confidentiality of State and

1 Federal Information”.

2 Section 4. Individuals Ineligible to be Hired. The cabinet, department, or responsible  
3 agency may refuse to employ, contract with, or permit to work as an employee, any  
4 applicant that submits to a background investigation if one (1) or more of the following  
5 conditions apply:

6 (a) The applicant refuses to provide photo identification;

7 (b) The applicant fails to submit their fingerprints at an authorized collection site as  
8 directed, within five (5) business days of being offered employment;

9 (c) Upon completion of the criminal background investigation, the cabinet or  
10 department receives notice that the applicant is found to have a disqualifying offense; or

11 (d) Final and acceptable disposition of a criminal charge or offense related to a  
12 disqualifying offense is not provided to the department within sixty (60) days of fingerprint  
13 submission.

14 Section 5. Notice of a Disqualifying Offense and Appeals - Applicants.

15 (1) The cabinet, department or responsible agency shall notify applicants determined  
16 to have a disqualifying offense.

17 (2) If an applicant wishes to obtain information concerning the disqualifying offense or  
18 challenge the accuracy of a criminal background investigation, the department shall refer  
19 the individual to the appropriate state or federal law enforcement agency.

20 Section 6. Notice of a Disqualifying Offense and Appeals – Current Employees.

21 (1) A current employee with classified status found to have a disqualifying offense upon  
22 completion of the criminal background investigation may be:

23 (a) Immediately removed from duties with access to FTI or confidential taxpayer

1 information;

2 (b) Immediately placed on administrative leave pending an internal review of the  
3 disqualifying offense; or

4 (c) Dismissed from employment where the nature of the disqualifying offense presents  
5 an immediate, serious, and irreparable risk to FTI or confidential taxpayer information if  
6 the employee's job duties require access to FTI or confidential taxpayer information.

7 (2) A cabinet or department classified employee whose background investigation  
8 reveals a disqualifying offense shall be eligible for reconsideration under an internal  
9 department review process and determination in accordance with KRS Chapter 18A.

10 (3) A cabinet or department classified employee may submit a written request for an  
11 internal employment reconsideration review to the Division of Human Resources no later  
12 than fourteen (14) calendar days from the date of notice of a disqualifying offense issued  
13 pursuant to Section 2 of this administrative regulation.

14 (4) A cabinet or department classified employee who requests a reconsideration of  
15 dismissal may be retained on staff, at the discretion of the department, during the review  
16 process subject to the following factors:

17 (a) The nature and severity of the disqualifying offense;

18 (b) The disposition of the offense;

19 (c) The time elapsed since the disqualifying offense;

20 (d) The employee's personnel history; and

21 (e) Whether the employee is assigned duties that require access to FTI or  
22 confidential taxpayer information.

23 (5) The request for an internal employment reconsideration review shall include the

1 following information:

2 (a) A written explanation of each disqualifying offense, including:

3 1. A description of the events related to the disqualifying offense;

4 2. The number of years since the occurrence of the disqualifying offense;

5 3. The age of the offender at the time of the disqualifying offense; and

6 4. Any other relevant and mitigating circumstances regarding the offense.

7 (b) Official documentation showing that all fines, including court-imposed fines, costs,  
8 or restitution, have been paid, or documentation showing adherence to a payment  
9 schedule, if applicable;

10 (c) The date probation or parole was satisfactorily completed, if applicable; and

11 (d) Employment and character references, including any other evidence demonstrating  
12 the ability of the individual to perform the employment responsibilities and duties  
13 competently.

14 (6) No later than thirty (30) calendar days from receipt of the written request for the  
15 reconsideration review, the Appointing Authority shall notify the employee of the final  
16 determination of the reconsideration review by the department.

17 (7) The employee may appeal the results of a reconsideration review to the Personnel  
18 Board in accordance with KRS 18A.095.

19 Section 7. Challenges to Criminal History Record Information.

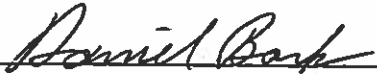
20 (1) An individual subject to a criminal background investigation required by KRS  
21 131.032 and this administrative regulation shall have the right to request and inspect his  
22 or her criminal history record and to request correction of any inaccurate information.

23 Section 8. Pardons, Diversions, and Expungements. An applicant, classified

1 employee, unclassified employee, federally funded time-limited employee, or contract  
2 employee who has received a pardon for a disqualifying offense, has had a  
3 disqualifying offense dismissed after successful completion of a diversion program, or  
4 has had a disqualifying offense expunged, shall not be barred from employment in a  
5 position with job duties that include access to or use of FTI or confidential taxpayer  
6 information, for reasons related to the underlying disqualifying offense(s).

103 KAR 1:120

APPROVED BY DEPARTMENT:

  
\_\_\_\_\_  
Daniel P. Bork, Commissioner  
Department of Revenue  
Finance and Administration Cabinet

9/13/17  
\_\_\_\_\_  
Date Approved by Commissioner

APPROVED BY CABINET:

  
\_\_\_\_\_  
WILLIAM M. LANDRUM III, SECRETARY  
Finance and Administration Cabinet

14 Sept 2017  
\_\_\_\_\_  
Date Approved by Secretary



## **PUBLIC HEARING AND PUBLIC COMMENT PERIOD**

A public hearing on this administrative regulation shall be held on October 24, 2017, at 1:00 p.m. in Room 11A, State Office Building, Frankfort KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Lisa Swiger, Tax Policy Research Consultant, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky, 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), [Lisa.Swiger@ky.gov](mailto:Lisa.Swiger@ky.gov)(email).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation: 103 KAR 1:120  
Contact Person: Lisa Swiger, Revenue Tax Policy Research Consultant  
Department of Revenue  
e-mail: lisa.swiger@ky.gov  
Phone: 502-564-9526

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for fingerprint-based state and national criminal background investigations for prospective and current employees of the Finance and Administration Cabinet or Kentucky Department of Revenue, including contract staff, whose job duties include access to or use of Federal Tax Information (FTI).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the background investigation requirements established by IRS Publication 1075 (Rev. 11-2016) and HB 262 from the 2017 legislative session.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing requirements for a fingerprint-based state and national criminal background investigation for prospective and current employees including contract staff whose job duties include access to or use of FTI.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will outline the process and requirements that must be met in order to be in compliance with the authorizing statutes.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects prospective and current employees, including contract staff, whose job duties include access to or use of FTI in the possession of the cabinet and are therefore subject to fingerprint-based state and national background investigations in accordance with IRS Publication 1075 (Rev. 11-2016) and KRS 131.032.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Prospective and

current employees including contract staff must submit to a fingerprint-based state and national background investigations in accordance with the IRS Publication 1075 (Rev. 11-201) and KRS 131.032.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to current or prospective employees. The department will absorb the cost of all background investigations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will remain in compliance with current state and federal requirements governing the security of FTI.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The department estimates approximately 1,000 current staff will be subject to a fingerprint-based state and national criminal background investigation initially, resulting in approximately \$75,000 in costs to the department.

(b) On a continuing basis: Going forward, the cost for background investigations is expected to be approximately \$65 per each new employee and will be absorbed by the agency budget. Current staff must submit to a new investigation at least once in each subsequent 10-year period. Department expenditures on a continuing basis are indeterminable because the number of employees that will be investigated each year will change based on need.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Budgeted department funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is expected to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation will not establish or increase any fees.

(9) TIERING: Is tiering applied? (explain why or why not) No. Tiering is not applicable as compliance with this administrative regulation applies equally to all employees affected by it.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation: 103 KAR 1:120  
Contact Person: Lisa Swiger, Revenue Tax Policy Research Consultant  
Department of Revenue  
e-mail: lisa.swiger@ky.gov  
Phone: 502-564-9526

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects prospective and current agency employees including contract staff whose job duties include access to or use of federal tax information (FTI).

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. IRS Publication 1075 (Rev. 11-2016), KRS 42.014 and KRS 132.032.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Because the Department of Kentucky State Police (KSP) charges \$53 for a criminal background investigation and approximately 1,000 department staff and contractors are expected to submit to fingerprint investigations during the first year, this administrative regulation is expected to generate approximately \$53,000 in revenue for KSP initially and \$12,000 for the FBI.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The volume of fingerprint investigations facilitated in accordance with this administrative regulation is indeterminable after the first year as the number of employees needing a background investigation on an ongoing basis is unknown. Therefore, the revenue generated for KSP in subsequent years is expected to decrease and be minimal.

(c) How much will it cost to administer this program for the first year? Approximately \$75,000 based on 1,000 employees at a rate of \$65 per employee plus \$10,000 for needed equipment.

(d) How much will it cost to administer this program for subsequent years? Expenditures on a continuing basis are indeterminable, but will be based on the methods of background investigation available at that time and the cost associated with such.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation

## FEDERAL MANDATE ANALYSIS COMPARISON

Regulation: 103 KAR 1:120  
Contact Person: Lisa Swiger, Revenue Tax Policy Research Consultant  
Department of Revenue  
e-mail: lisa.swiger@ky.gov  
Phone: 502-564-9526

1. Federal statute or regulation constituting the federal mandate.

IRS Publication 1075 (Rev. 11-2016), 26 C.F.R. 301.6103(p)(7)-1, 26 U.S.C. 6103

2. State compliance standards.

KRS Chapter 42 and 131.032.

3. Minimum or uniform standards contained in the federal mandate.

IRS Publication 1075 (Rev. 11-2016) requires an FBI fingerprint investigation for any individual granted access to Federal Tax Information (FTI).

26 C.F.R. 301.6103(p)(7)-1 allows the Internal Revenue Service (IRS) to terminate or suspend disclosure of returns and return information to any authorized recipient if the IRS determines that:

(1) The authorized recipient has allowed an unauthorized inspection or disclosure of returns or return information and the authorized recipient has not taken adequate corrective action to prevent the recurrence of an unauthorized inspection or disclosure; or

(2) The authorized recipient does not satisfactorily maintain the safeguards for protecting returns and return information, and has made no adequate plan to improve its system to maintain the safeguards satisfactorily.

26 U.S.C. 6103 pertains to the confidentiality and disclosure of returns and return information.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

This administrative regulation does not impose stricter requirements than those required by federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

Not applicable.